



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

Roger Shanor, Treasurer  
Republicans for Trauner  
P.O. Box 585  
Thermopolis, WY 82443

**AUG 13 2007**

RE: MUR 5889  
Republicans for Trauner and  
Roger Shanor, in his official capacity  
as treasurer

Dear Mr. Shanor:

On December 20, 2006, the Federal Election Commission (the "Commission") notified Republicans for Trauner (the "Committee") and you, in your official capacity as treasurer, of a complaint alleging that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you with a copy of the complaint.

After reviewing the allegations contained in the complaint, and publicly available information, the Commission on July 24, 2007, found reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 432(e)(4), 433(a), 434(a)(4), 434(g)(1), 441a(f), 441b(a) and 441d, provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement.

*See 2 U.S.C.*

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§ 437g(a), 11 C.F.R. Part 111 (Subpart A). Similarly, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

Sincerely,



Robert D. Lenhard  
Chairman

Enclosures  
Designation of Counsel Form  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Republicans for Trauner and Roger Shanor,  
6 in his official capacity as treasurer

**MUR: 5889**

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9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by  
11 Bill Maiers, Campaign Manager for Cubin for Congress. *See* 2 U.S.C. § 437g(a)(1). The  
12 complaint alleges that Republicans for Trauner ("RFT"), a committee active in the 2006 general  
13 election for U.S. Representative from Wyoming, along with J. Nichols Patrick (Chairman of RFT)  
14 and Stephen Simonton (founder of RFT), failed to report electioneering communications, failed to  
15 file a statement of organization with the Commission and failed to report receipts and  
16 disbursements, all in violation of the Federal Election Campaign Act of 1971, as amended ("the  
17 Act"). *See* 2 U.S.C. §§ 434(f), 433(a), and 434(a)(4). The complaint asserts that RFT funded a  
18 newspaper advertisement, mailed flyers to 22,000 households across the State of Wyoming, and  
19 funded and produced radio advertisements. Copies of all three communications were included  
20 with the complaint. Each communication explicitly calls for the election of Gary Trauner; the  
21 newspaper advertisement and the flyer also explicitly call for the defeat of Representative Cubin.  
22 RFT did not respond to the complaint. Based on the complaint and other available information,  
23 there is reason to believe that Republicans for Trauner and Roger Shanor, in his official capacity as  
24 treasurer, violated the Act in this matter.

25 **II. FACTUAL AND LEGAL ANALYSIS**

26 RFT raised \$28,471.00 and spent \$26,622.52 on independent expenditures supporting the  
27 election of Gary Trauner, the Democratic candidate, and opposing the re-election of

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1 Representative Barbara Cubin, the Republican candidate. RFT initially registered and filed  
2 reports with the Wyoming Secretary of State but failed to timely register and report with the  
3 Federal Election Commission. The available information indicates that RFT learned of its failure  
4 and registered with the Commission prior to the election and began filing FEC disclosure reports.  
5 In addition to untimely registering and reporting, the information indicates that RFT violated a  
6 number of other provisions of the Act, as discussed below.

7 A. RFT's Use of a Candidate's Name

8 The Act prohibits the use of a candidate's name in the name of a non-authorized  
9 committee. 2 U.S.C. § 432(e)(4). Republicans for Trauner, a non-authorized committee, uses  
10 the name of a candidate, Gary Trauner, in its name, and none of the exceptions set forth in  
11 11 C.F.R. § 102.14(b) apply.<sup>1</sup> Accordingly, RFT violated 2 U.S.C. § 432(e)(4).

12 B. Late-filed Statement of Organization

13 The Act defines "political committee" as any group of persons which receives  
14 contributions aggregating in excess of \$1,000 during a calendar year or which makes  
15 expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A).  
16 According to its disclosure reports, RFT first received over \$1,000 in contributions on  
17 September 28, 2006, and thus exceeded the statutory threshold on that day. The Act further  
18 requires committees such as RFT to file a statement of organization with the Commission within  
19 ten days after becoming a political committee. 2 U.S.C. § 433(a) Thus, RFT was required to

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<sup>1</sup> These exceptions apply to 1) delegate committees, 2) draft committees, and 3) special projects and other communications of unauthorized committees if the title clearly and unambiguously shows opposition to the named candidate 11 C F R § 102 14(b)(1) - (3)

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1 file a statement of organization with the Commission by October 8, 2006. RFT did not file a  
2 statement of organization until November 2, 2006. Accordingly, RFT violated 2 U.S.C. § 433(a).

3 C. Late-filed Pre-General Election Report and Year End Report

4 Based on the timing of RFT's activity, RFT should have next filed a Pre-General Election  
5 Report. Committees not authorized by candidates shall file a Pre-Election Report, which shall be  
6 filed no later than the 12<sup>th</sup> day before any election in which the committee makes contributions or  
7 expenditures in connection with the election if such disbursements have not been previously  
8 disclosed. Such report shall disclose all receipts and disbursements as of the 20<sup>th</sup> day before the  
9 election. 2 U.S.C. § 434(a)(4)(A)(ii), 11 C.F.R. § 104.5(c)(1)(ii). RFT made its first  
10 expenditure, \$1,200 for a newspaper advertisement, on October 12, 2006. Because RFT made  
11 this expenditure on behalf of Gary Trauner, a candidate in the November 2006 election, RFT  
12 should have filed a Pre-General Election Report, which was due by October 26, 2006, covering  
13 its activity through October 18, 2006, which included \$19,300 in contributions and \$1,200 in  
14 expenditures. See 2 U.S.C. § 434(a)(4)(A)(ii).

15 Subsequently, RFT timely filed its 2006 Post-General Election Report, but did not timely  
16 file its 2006 Year End Report, which was due by January 31, 2007 See 2 U.S.C.  
17 § 434(a)(4)(A)(i). The Commission's Reports Analysis Division sent a Notice of Failure to File  
18 to RFT on March 7, 2007, and RFT filed its Year End Report on April 4, 2007. The Report  
19 discloses no receipts or disbursements during the covered period.<sup>2</sup>

<sup>2</sup> Also on April 4, 2007, RFT filed a report covering January 1, 2007 through March 31, 2007, which disclosed no receipts or disbursements, and disclosed cash-on-hand in the amount of \$1,848.48. RFT labeled both this report and its 2006 Year End Report as a "Termination Report." The Commission sent a letter to RFT on April 11, 2007 denying the termination in light of this ongoing MUR.

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Accordingly, RFT violated 2 U.S.C. § 434(a)(4) by failing to timely file its 2006 Pre-General Election and Year End Reports.

D. Failure to File 24-Hour Independent Expenditure Reports

An independent expenditure ("IE") is an expenditure for a communication that is not coordinated and that expressly advocates the election or defeat of a clearly identified candidate for Federal office. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. RFT disclosed making \$26,622.52 in IEs on its Form 5 filed with the Commission on November 3, 2006, and on its Post-General Election Report. However, RFT made most of its IEs within 20 days of the general election and, therefore, should have also filed 24-Hour IE reports. See 2 U.S.C. § 434(g)(1). This provision requires persons making IEs aggregating \$1,000 or more after the 20<sup>th</sup> day, but more than 24 hours, before the date of an election to file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1)(A). RFT did not timely disclose the following IEs by filing 24-Hour reports:

Date	Amount	Purpose	Payee
10/25/2006	\$ 260.00	Mail piece	Snowy Range Graphics
10/25/2006	\$15,771 12	Mail piece	AMBI
10/27/2006	\$ 3,980.00	Radio ads	Cowboy State News Network
10/27/2006	\$ 200.00	Radio ads	KVOW Radio
10/27/2006	\$ 1,000.00	Radio ads	Big Horn Radio Network
11/03/2006	\$ 900.00	Radio ads	Big Horn Radio Network
11/03/2006	\$ 1,238 40	Newspaper ads	Casper Star Tribune
11/03/2006	\$ 696.00	Newspaper ads	Jackson Hole News & Guide
11/03/2006	\$ 849.00	Newspaper ads	Billings Gazette
TOTAL	\$24,894 52		

Accordingly, RFT violated 2 U.S.C. § 434(g)(1).<sup>3</sup>

E. Incomplete and Missing Disclaimers

The advertisements by RFT, a political committee, were public communications that contained incomplete and missing disclaimers. *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). First, RFT's newspaper advertisement, titled "'Republicans for Trauner' Believe Wyoming Needs Change," contained a disclaimer, "Paid by Republicans for Trauner PAC." *See* Complaint, Exh. A. This advertisement, however, fails to state whether it was authorized by any candidate. *See* 2 U.S.C. § 441d(a)(2) and (3). Further, the disclaimer is not set forth in a printed box. *See* 2 U.S.C. § 441d(c)(2).<sup>4</sup>

Second, RFT's flyer, titled "Republicans for Trauner," which, according to the complaint, was mailed to 22,000 households across Wyoming, contained no disclaimer.<sup>5</sup> *See* Complaint, Exh. B. Under the Commission's regulations, RFT's flyer constituted a "public communication." *See* 11 C.F.R. §§ 100.26 ("public communication" definition includes "mass mailing") and 100.27 ("mass mailing" defined as mailing by U.S. mail more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period). As a public communication by a political committee, the flyer was subject to the Act's disclaimer requirements. *See* 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1).

<sup>3</sup> The complaint alleges that RFT engaged in unreported electioneering communications ("ECs") Although EC reporting does relate to certain radio broadcast communications, RFT's payments for radio advertisements were IEs and therefore needed to be disclosed as IEs rather than as ECs *See* 2 U.S.C. § 434(f)(3)(B)(ii), 11 C.F.R. § 100.29(c)(3)

<sup>4</sup> After the complaint was filed in this matter, the Commission obtained a copy of another RFT newspaper advertisement, which contains a disclaimer with the same problems

<sup>5</sup> The complaint cited a press article reporting a statement by Stephen Simonton that RFT put out 22,000 flyers *See* Noelle Straub, *GOP Pours in Money for Cubin*, CASPER STAR-TRIBUNE, October 31, 2006

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1 Finally, RFT's radio advertisement, the script of which was included with the complaint,  
2 contains the disclaimer "This ad is paid for by Republicans for Trauner." See Complaint, Exh. C.  
3 Like RFT's newspaper advertisement, its radio advertisement fails to state whether it was  
4 authorized by any candidate. See 2 U.S.C. § 441d(a)(2) and (3). Further, the Act requires  
5 specific additional disclaimer language for radio (and television) communications that are not  
6 authorized by candidates or candidate committees or their agents: "\_\_\_\_\_ is responsible for the  
7 content of this advertising," with the blank to be filled in with the name of the political  
8 committee or other person paying for the communication. 2 U.S.C. § 441d(d)(2). RFT's radio  
9 advertisement does not contain this language.<sup>6</sup>

10 Accordingly, RFT violated 2 U.S.C. § 441d.

11 F. Receipt of Excessive and Prohibited Contributions

12 As a political committee, RFT should have complied with the contribution limitations  
13 and source prohibitions of the Act, which it failed to do. RFT received \$17,099 in excessives  
14 and \$846 in apparent corporate contributions.

15 During the 2006 election cycle, the contribution limit for a person giving to a candidate  
16 and his or her authorized committees was \$2,100 per election. See 2 U.S.C. § 441a(a)(1)(A).  
17 For contributors to RFT, this limit applies to their aggregate contributions to RFT and to Trauner  
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<sup>6</sup> In the event that RFT's radio advertisement was authorized by a candidate, the advertisement would be required to include an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication. See 2 U.S.C. § 441d(d)(1)(A). We have no information at this time suggesting that the advertisement was authorized by a candidate.



1 for Congress, Gary Trauner's principal campaign committee.<sup>7</sup> The federal disclosure reports  
2 filed by RFT and Trauner for Congress indicate that seven individuals contributed to both  
3 committees. Three of these contributors' total contributions to the two committees exceeded the  
4 applicable contribution limit of \$2,100 per election:

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<sup>7</sup> The Commission's regulations explain the application of contribution limits for contributors who give to political committees which support the same candidate. Pursuant to 11 C.F.R. § 110.1(h), a person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as (1) the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee, (2) the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election, and (3) the contributor does not retain control over the funds. The effect of section 110.1(h) is that contributors who give to both the candidate committee and another committee supporting the same candidate may be subject to the single limit applicable to contributions to the candidate committee. For example, if the requirements of section 110.1(h) are not met, a contributor who has given the maximum contribution to the candidate cannot give any amount to the other political committee with respect to the same election. The Commission has applied this regulation where the other committee makes contributions to the candidate committee. See, e.g., MUR 4633 (Triad Management Services, Inc.). The Commission has clarified that this regulation also applies where the other political committee, like RFT in the instant matter, makes independent expenditures on behalf of the candidate. See Commission Policy Statement *Contributions to Political Committees Making Independent Expenditures on Behalf of a Clearly Identified Candidate*, 41 Fed. Reg. 44,130 (October 6, 1976), Commission Response to AOR 1976-20, *Explanation and Justification of 11 C.F.R. § 110.1(h)*, 52 Fed. Reg. 44,130 (January 9, 1987), Advisory Opinion 1984-2, MURs 2457 (Draft Mike) and 1414 (Committee to Aid Connecticut). See also H.R. Rep. No. 1057, 94<sup>th</sup> Cong. 2d Sess. at 58 (1976), reprinted in FEC, *Legislative History of Federal Election Campaign Act Amendments of 1976* at 1052 (the legislative history of section 441a, which provides in pertinent part "The conferees also agree that the same limitations on contributions that apply to a candidate shall also apply to a committee making expenditures solely on behalf of such candidate.")

Contributions to RFT do not meet the requirements of section 110.1(h) for two reasons. First, RFT appears to be a "single candidate committee," defined at 11 C.F.R. § 100.5(e)(2) as a "political committee other than a principal campaign committee which makes or receives contributions or makes expenditures on behalf of only one candidate." See 11 C.F.R. § 110.1(h)(1). RFT's very name, and its activity in the form of independent expenditures on behalf of a single candidate, indicate its status as a single candidate committee. See Advisory Opinion 1984-2. Second, contributors to RFT knew that their contributions would be contributed to or expended on behalf of Gary Trauner. See 11 C.F.R. § 110.1(h)(2). RFT's name, as well as the solicitation contained in its newspaper advertisement attached to the complaint, made clear to contributors that their funds would be spent in support of Gary Trauner. Accordingly, contributions to RFT count against contributors' section 441a(a)(1)(A) limits for contributions to Trauner for Congress.

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<u>Name</u>	<u>Amount</u>	<u>Date</u>	<u>Recipient</u>
Armstrong, Geoff	\$2,100	12/25/2005	Trauner for Congress
Armstrong, Geoff	\$2,100	9/11/2006	Trauner for Congress
Armstrong, Geoff	\$ 500	9/28/2006	Republicans for Trauner
Farkas, Andrew	\$2,100	9/29/2006	Trauner for Congress
Farkas, Andrew	\$4,600	10/31/2006	Republicans for Trauner
Morris, Bob	\$1,900	6/14/2006	Trauner for Congress
Morris, Bob	\$2,100	7/10/2006	Trauner for Congress
Morris, Bob	\$ 199	unitemized	Trauner for Congress
Morris, Bob	\$5,000	10/04/2006	Republicans for Trauner
Morris, Bob	\$5,000	10/10/2006	Republicans for Trauner
Morris, Bob	\$2,000	10/30/2006	Republicans for Trauner

Accordingly, RFT knowingly accepted excessive contributions from three individuals in violation of 2 U.S.C. § 441a(f).

Finally, the available information suggests that RFT accepted corporate contributions. See 2 U.S.C. § 441b(a). RFT disclosed to the Wyoming Secretary of State the receipt of two apparent corporate contributions, \$696.00 from Treeline Marketing, Inc. and \$150.00 from Rocky Mountain, Inc. RFT did not disclose to the Commission a \$696.00 contribution from Treeline Marketing, but did disclose a \$696.00 contribution from Dave Solitt, whose employer is identified as Treeline Marketing, raising a question as to whether the individual or the corporation is the source of the contribution. RFT did not disclose the \$150.00 Rocky Mountain, Inc. contribution to the Commission; however, RFT did not itemize to the Commission any contributions as small as \$150.00. See 2 U.S.C. § 434(b)(3)(A) (itemization requirement applies to contributions which aggregate above \$200 in a calendar year). Accordingly, RFT may have received corporate contributions in violation of 2 U.S.C. § 441b(a).

G. Summary

Given the available information discussed above, there is reason to believe that

Republicans for Trauner and Roger Shanor, in his official capacity as treasurer, violated 2 U.S.C.

§§ 432(e)(4), 433(a), 434(a)(4), 434(g)(1), 441a(f), 441b(a) and 441d.

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